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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DEREK FRANKS,

Plaintiff,

-against-

THE LAQUILA GROUP INC.,

Defendant.  
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MATSUMOTO, United States District Judge.

BROOKLYN OFFICE  
**MEMORANDUM AND ORDER**  
13-CV-980 (KAM)

Plaintiff Derek Franks, who is currently incarcerated at Livingston Correctional Facility in Sonyea, New York, filed this *pro se* action pursuant to 42 U.S.C. § 1983. The court grants plaintiff's request to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). However, for the reasons discussed below, the complaint is dismissed for failure to state a claim upon which relief may be granted.

Standard of Review

Under 28 U.S.C. § 1915(e)(2)(B), a district court shall dismiss an *in forma pauperis* action where it is satisfied that the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” An action is “frivolous” when either: (1) “the ‘factual contentions are clearly baseless,’ such as when allegations are the product of delusion or fantasy”; or (2) “the claim is ‘based on an indisputably meritless legal theory.’” Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998) (internal citation omitted). Section 1915 “provide[s] an efficient means by which a court can screen for and dismiss legally insufficient claims.” Abbas v. Dixon, 480 F.3d 636, 639 (2d Cir. 2007) (citing Shakur v. Selsky, 391 F.3d 106, 112 (2d Cir. 2004)).

Moreover, at the pleadings stage of the proceeding, the court must assume the truth of “all well-pleaded, nonconclusory factual allegations” in the complaint. Kiobel v. Royal Dutch Petroleum Co., 621 F.3d 111, 123 (2d Cir. 2010) (citing Ashcroft v. Iqbal, 556 U.S. 662 (2009)). A complaint must plead sufficient facts to “state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

It is axiomatic that *pro se* complaints are held to less stringent standards than pleadings drafted by attorneys, and that the court is required to read the plaintiff's *pro se* complaint liberally and interpret it as raising the strongest arguments it suggests. See Erickson v. Pardus, 551 U.S. 89, 94 (2007); Hughes v. Rowe, 449 U.S. 5, 9 (1980); Sealed Plaintiff v. Sealed Defendant #1, 537 F.3d 185, 191-93 (2d Cir. 2008).

### Discussion

Plaintiff's complaint alleges that while working for defendant on October 16, 2011, he was subjected to “racially insensitive and derogatory remarks” from a co-worker. Compl. ¶ III C. Plaintiff alleges that when he and his co-worker complained, their employment was terminated.<sup>1</sup> Id. Plaintiff seeks monetary damages. Id. ¶ V.

In order to state a § 1983 claim, a plaintiff must allege (1) that the challenged conduct was “committed by a person acting under color of state law,” and (2) that such conduct “deprived [the

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<sup>1</sup> To the extent that plaintiff seeks to allege a claim for employment discrimination pursuant to Title VII of the Civil Rights Act of 1964, the court notes that before a federal court may review a claim under Title VII, a plaintiff must first exhaust his administrative remedies by filing a charge with the Equal Employment Opportunity Commission (EEOC) or an appropriate state agency within 300 days of the unlawful discriminatory act. 42 U.S.C. § 2000e-5(e)(1); McPherson v. N.Y.C. Dep't of Educ., 457 F.3d 211, 213 (2d Cir. 2006).

plaintiff] of rights, privileges, or immunities secured by the Constitution or laws of the United States.” Cornejo v. Bell, 592 F.3d 121, 127 (2d Cir. 2010) (quoting Pitchell v. Callan, 13 F.3d 545, 547 (2d Cir. 1994)). Section 1983 does not create any independent substantive right; rather it is a vehicle to “redress . . . the deprivation of [federal] rights established elsewhere.” Thomas v. Roach, 165 F.3d 137, 142 (2d Cir. 1999).

As the Supreme Court has held, “the under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful.” American Manufacturers Mutual Insurance Co. v. Sullivan, 526 U.S. 40, 50 (1999) (internal quotations omitted); cf. Brentwood Academy v. Tennessee Secondary School Athletic Ass’n, 531 U.S. 288, 295 (2001) (“[S]tate action may be found if, though only if, there is such a ‘close nexus between the State and the challenged action’ that seemingly private behavior ‘may be fairly treated as that of the State itself.’”) (quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351 (1974)).

For plaintiff to succeed on his § 1983 claim, he must first establish that the conduct of the named defendant is “fairly attributable to the State.” American Manufacturers Mutual Insurance Co., 526 U.S. at 50. Here, defendant Laquila Group Inc. is a private corporation, the conduct of which as alleged in plaintiff’s complaint cannot be fairly attributed to the state.

Conclusion

Accordingly, plaintiff's complaint is dismissed for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. Coppedge v. United States, 369 U.S. 438, 444-45 (1962). The Clerk of Court is respectfully asked to mail a copy of this order to plaintiff and to note service on the docket no later than March 5, 2013.

SO ORDERED.

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/s/  
KIYO A. MATSUMOTO  
United States District Judge

Dated: Brooklyn, New York  
March 4, 2013